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A CRITICAL ANALYSIS ON AMENEDED LABOUR CODES

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ABSTRACT

All codes are approved by Parliament and endorsed by the President, prepared for implementation but currently ineffective since the date of effectiveness has not been announced. They will take the place of 29 current labour laws. A new definition of machinery, workers, etc., has been established. The Central Government can apply this Code to any establishment that meets the size criteria that may be announced. The Code also outlines how the registration process for unorganised workers, gig workers, and platform workers can be carried out. Modifications in the Employees Provident Fund (EPF) and Employees State Insurance Scheme (ESI) for gig and platform workers have been enacted. With a proposed maximum of 12 hours of work per day, the Occupational Safety, Health, and Working Conditions Code will mandate that all businesses provide restrooms, showers, and locker facilities for both male and female workers, as well as for transgender individuals. The optimal government has now been completely established for public sector projects. The 2019 Code on Wages aims to regulate bonus and wage distributions across all employment sectors. The Code prohibits discrimination on the basis of gender in terms of compensation and hiring practices for the same or similar positions. There is no framework or system of universal social security in SSC. MWC 2020 has once again ignored and failed to establish a method for determining an appropriate minimum wage for employees. Furthermore, it has removed legal options for workers and enforcement mechanisms, as previously determined by the Supreme Court.

Keywords: code, employer, worker, industry, social security, welfare, wages, reforms, occupational safety.

INTRODUCTION

One of the latest socio-legal reforms being implemented in India is the streamlining of the labour regulations and the amendment of the law to facilitate coexistence from the perspectives of constitutional rights and human rights. There exist more than forty labour legislation acts in India. This situation has resulted in numerous disputes concerning the laws' overriding impacts, and it appears to be incredibly challenging to address all of these laws simultaneously. The reforms in labour law may prove advantageous as they will enhance the transparency of the labour regulations,

promote ease of compliance, and diminish their complexity. Many foreign labour laws and practices seem to have been integrated into the new industrial relations legislation. The latest provisions of this legislation signify the liberalisation and dynamic transformation of the demands of labour law. This legislation has included several labour-related measures, such as the categorization of workers, paydays, holidays, and wage rates, among others. If a factory has over 300 employees, this regulation will be applicable. Additional provisions consist of those regarding layoffs, closures, and retrenchments.



Furthermore, it acknowledges the necessity of providing notice of a strike at least 14 days in advance and also imposes a prohibition on strikes under certain conditions. Moreover, it has lowered the percentage of workers that belong to exclusive bargaining units to 51%. The Social Security Code encompasses retirement, employment, and social security benefits. Both organized and unorganized workers were included in it. Consequently, it may provide comprehensive social security to employees in unorganized sectors. This law also granted the government the power to establish regulations for the provident fund, work injury benefits, housing, and child-focused education programs. Interstate migrant workers, platform workers, gig workers, and individuals in the film industry are all included within the definition of employees in the Social Security Code, etc.

Additionally, it contains provisions that deal with reducing employee contributions in emergencies or natural disasters. The Occupational Safety, Health, and Working Conditions Code, 2020. This legislation replaces 13 separate labour law acts. The primary aim of this act is to regulate employee health, safety, and working conditions in addition to employment law.

LITERATURE REVIEW

There was no distinct ancient legislation for laborers in India. As a segment of Civil Law, the Labour law in India began to evolve alongside the emergence of British colonialism. Labour Law was initially enacted by the British Raj, which primarily aimed to safeguard the interests and rights of British Employers. The first formal implementation of Labour Law in India was through the Factories Act, introduced in 1883 at the British Parliament, and in India, the provisions became effective with fundamental labor law stipulations such as the mandate of eight hours of work, the prohibition of women in night employment, the introduction of overtime wages for hours worked beyond eight, and the abolition of child labor, among others.

The earliest reference to laws governing employer and employee relations in India can be traced to the Trade Dispute Act, 1929 (Act 7 of 1929), as it contained provisions concerning the limitation of strike rights in factories and the issue of lockouts. However, at that time, British India lacked mechanisms to resolve disputes arising from these matters.

In the post-independence era, the newly independent India established its Labour law framework beginning with the Industrial Dispute Act, 1947. Subsequently, there were conferences regarding labor and capital partnerships that addressed issues like fair wages, working conditions, and fostering harmonious cooperation of labour for ongoing progressive productivity that would lead to national economic development.

Prior to the legal reforms of Labour law codes, India had more than 40 Labour Laws. Some of the key Laws and their fundamental provisions are as follows:

The Industrial Disputes Act, 1947 – The provisions of this act are primarily focused on ensuring industrial peace and harmony by resolving disputes in the organized sectors through various mechanisms such as the settlement of industrial disputes via conciliation, arbitration, and adjudication as provided under the statute.

The Factories Act, 1948 – This act encompasses critical provisions concerning factories and their workers, including working hours, worker facilities, employment conditions for women, safety measures for workers, etc.

The Minimum Wages Act, 1948 – This act addresses mandatory and strict provisions concerning minimum wages that must be paid to workers (both skilled and unskilled).

The Employment State Insurance Act – This act pertains to the health and safety provisions for employees and also offers protective facilities against potential injuries, maternity benefits, and other related matters.



The Child Labour (Prohibition) Act – This act forbids the employment of children under the age of 14 in any hazardous work and includes penal provisions.

Labour Policy in India has remained dynamic, progressing and adapting new policies in accordance with social changes and the need to enhance harmony, social justice, and the economic development of the nation.

AN ANALYSIS ON LABOUR REFORMS IN INDIA

In India, the word 'Labour' is included under the Concurrent List of the Constitution, indicating that both Union and State Legislatures can enact laws concerning it. This has resulted in a complex nature of those acts. The new Labour law Codes emerged from the effort to simplify and rationalize the existing Labour Laws. The factors that prompted the Labour Law reforms are:

The current over 200 state and 40 central laws often overlapped in jurisdictions; thus, reforms were needed to consolidate those laws under a few primary law codes.

It is observed that the complicated procedures create legal loopholes that lead to corruption and exploitation of workers. Simplification may help eliminate these loopholes and safeguard business and the economy.

A large number of informal sector workers were unaffected by the previous laws; new policies were necessary in this regard.

There was an issue concerning Contract labor, which lacked fixed-term employment; new policies needed to be established for this situation.

The female labor force in the informal sector, which typically held low-paying jobs, lacked legal provisions for health and safety.

The rules and regulations regarding employee bargaining were inadequate.

All these fundamental issues prompted the 2nd National Commission on Labour (2002) to

suggest the Codification of labour laws and to enact Legal Reforms of the policies.

THE INDUSTRIAL RELATION CODE, 2020

This code introduced several new provisions that concentrate on the grievances of workers who have been terminated in disputes.

The legal reform presented in this code is notably significant, as it encourages increased employment opportunities without requiring administration/Government approval; up to 300 employees can be employed, which is a positive move towards addressing unemployment issues.

Employers have welcomed this code as it raised the limit of employees to 300, which an employer can hire without the complexities of government approval for termination. It aids in simplifying the law, reducing the procedural burdens faced by the employer.

This new code may not favor small unions, as employers possess enhanced power to overshadow the voices of small unions against their interests. Nonetheless, it is presumed in the code that the extended timeframe before granting permission to strike offers an opportunity for dialogue and resolution of conflicts through various settlement methods.

THE CODE ON SOCIAL SECURITY, 2020

This marks the first instance in the evolutionary history of labour law that has addressed the social security of workers in the unorganised sector, such as Migrant Workers, Platform Workers, etc.

This code has indicated that 'Social security fund' will be established by the Central Government for the Unorganised workers. Employers of the companies will make contributions to this fund. These employers are referred to as aggregators. The contribution amount for this fund shall not be less than 12% of their annual turnover.

This Code has brought about the largest number of changes. The popularization of social



safety is a visionary and highly anticipated process.

By incorporating gig and platform workers, this code has addressed the needs of millions of self-employed individuals and those engaged on a contract basis in the service sector for companies like Ola, Uber, Flipkart, Amazon, etc. It also encompasses agricultural workers. Additionally, the minimum service requirement has been lowered to one year (from 5 years) for the withdrawal of gratuity.

Despite the reforms, there may be several loopholes in the practical enforcement of the laws. A social security scheme can only achieve success when there is a compulsory Employer-Employee contribution in the company or industry, ensuring the availability of its benefits for the workers. The code has not mandated this requirement for unorganised establishments, leaving it as a discretionary measure. It only accounted for establishments with fewer than 10 workers, which does not encompass the majority of workers in the unorganised sectors. This absence of contribution may not generate a sufficient fund for social security. It could lead to political conflicts since the responsibility has been assigned to the central government.

THE EMPLOYMENT SAFETY, HEALTH AND LABOUR CONDITIONS CODE, 2020

In this new code, inter-state migrant workers have been granted the right to access benefits from the Public Distribution System. This can be utilized in either their home state or employed state.

The maximum working hours have been set at eight hours per day, beyond which overtime wages at double the normal rates are required. This time limit now aligns with the ILO Convention. To enhance safety in large numbers, the number of 'non-core' activities where contract labor can be used has been reduced to 11. This can serve as a preventive measure for safety and protection against hazards.

The state-wise database established for tracking migrant workers' records relies on self-declaration. The income threshold of Rs. 18,000 per month designated to categorize inter-state migrants is not in line with the per capita income figures in India. In India, the monthly per capita income is approximately Rs. 11,385 in 2020, which aligns with the code. The code regarding 'Fixed-term employment' mandates that at least 50 workers must be employed, thereby placing small employees of smaller companies at risk in situations of fixed-term employment.

THE CODE ON WAGES, 2019

It seeks to govern wage and bonus payments across all forms of employment (industry, business, trade and manufacture). The Code on Wages supersedes four existing laws:

- Minimum Wages Act, 1948
- Payment of Wages Act, 1936
- Payment of Bonus Act, 1965
- Equal Remuneration Act, 1976

Silent Features of The Code on Wages, 2019:

- The Code prohibits discrimination based on gender in relation to remuneration and hiring of employees for the same or comparable work.
- Similar Work here refers to tasks that require an equivalent level of skill, effort, experience, and responsibility.
- This Code will extend to all employees. The Central Government will set pay rates for those engaged in mines, railways, and oil fields, while State Governments will set such rates for all other forms of employment.
- The Central or State Governments will determine the hours of operation. When an employee works overtime, they are entitled to additional compensation (at least double the standard wages).
- The word "wages" in this Code means the total sum of a person's salary, allowances, or other



monetary components, excluding bonuses and travel allowances, among others. Based on the workers' living standards, the Central Government will establish the minimum wage. It is crucial to note that minimum wages will differ based on geographic location.

- The minimum wages set by the Central or State Governments must be above the minimum wage floor. When determining the minimum wage, the Government will consider the skill level of the workers and the complexity of the work. These will be modified and reviewed by the government every five years. Employers are prohibited from compensating employees below the minimum wage.

- If current minimum wages are higher than the minimum wage floor, neither the federal nor state governments can reduce minimum wages.

- An employer may designate wage periods as daily, weekly, biweekly, or monthly. Compensation will be disbursed in coins, currency notes, electronic funds transfer, checks, or bank deposits.

- Employers have the right to deduct earnings for reasons such as fines, absence from duty, employer-provided housing, or advance payments made to the employee. It is essential to emphasize that these deductions must not exceed 50% of the employee's total pay.

- Employees whose monthly earnings do not surpass a certain amount qualify for an annual bonus of at least 8.35 percent of their monthly earnings or Rs. 100, whichever is higher. According to the Code, an employee may receive a bonus of up to 20% of their yearly salary.

- Advisory Boards will be constituted by the Central and State Governments to guide them on various matters, including the establishment of minimum wages and enhancing employment opportunities for women. The Central Advisory Board will consist of an equal number of employees and employers, along

with five representatives from state governments and independent individuals. The State Advisory Board will include employees, employers, and independent individuals. Women will account for one-third of the total membership on both Advisory Boards.

pay workers below the minimum wage. As per the Code, the highest penalty for the previously mentioned offenses is three months in jail and a fine of Rs. 1 lakh.

CRITICAL ANALYSIS OF NEW CODES

To facilitate business operations, the Indian government has implemented new labour codes. These codes are largely considered the most significant advancement in labour law reform in the past thirty years, and they were a primary suggestion from the 2002 report of the Second National Commission on Labour. However, labour unions assert that the Indian labour market remains "flexible" for employers, despite the supposed existence of "restrictive labour laws," and that any further modifications to the current labour law structure will negatively impact the working class.

The principal argument supporting the reforms is that they aim to spur economic and industrial growth by eliminating the numerous labour laws that hinder employment. The belief is that the new labour codes will benefit the Indian economy by simplifying the process for businesses to establish operations in the country.

- The Industrial Relations Act 2020 (IRC) prohibits strikes, which is believed to hinder trade unions from organizing workers and makes collective bargaining more challenging.

- According to the Industrial Disputes Act and the new Code, individuals in both formal and informal sectors are increasingly likely to be employed on a contract basis or for short-term durations due to this new regulatory framework that promotes temporary employment.

- A dataset compiled by Kapoor indicates that out of 24 percent of regular wage salaried



workers (RWS), 68. 8 percent did not possess a written job contract.

- Regarding social security programs for unorganized workers, the State government has traditionally been responsible for ensuring their access. With the introduction of the Social Security Code, 2020 (SSC), some of this obligation has been transferred to the Central government in a somewhat arbitrary manner.
- The SSC 2020 contains a distinct section addressing gig work and platform economies, such as Uber. This provision is not included in other codes, which poses a potential issue and may create conflicts between employers and employees working in the platform economy.
- For individuals working on a platform, there is no provision for health insurance or paid time off. The codes do not address these issues or other concerns for these workers. Additionally, there are doubts regarding the government's resources and infrastructure for the electronic registration of unorganized workers, gig workers, and platform employees (section 113).
- Mehrotra and Sarkar also highlight that the current Code overlooks the significant number of unregistered establishments (67. 7 percent) in the unorganized sector, instead asserting that 'every establishment to which the code applies' must be registered (Mehrotra, Sarkar (2021) supra note 9).
- Nonetheless, the Wage Code, 2019 (WC) sets a national minimum wage of Rs. 178, below which states are not allowed to establish their own minimum wages. MWC 2020 has yet again overlooked and failed to provide a methodology for identifying an appropriate minimum wage for laborers, in addition to eliminating enforcement mechanisms and workers' rights to file claims in court, as previously instructed by the Supreme Court.
- Workers can no longer access the courts to advocate for increased wages. Instead, they are required to present their cases to a quasi-

judicial body and an appellate authority created by the Wage Code.

- It is also illegal to employ women who have recently given birth, experienced a miscarriage, or undergone a medical abortion within the past six weeks. Furthermore, maternity benefits can only be claimed if the employee has worked for no less than eighty days prior to giving birth, which implies that many expectant mothers will be unable to work or receive social benefits. This would exacerbate their difficulties and provide a pretext for issues like this, which might result in legal action against their employer if such activities were discovered.
- Moreover, the Code does not acknowledge the microscale and agricultural sectors, indicating that it does not encompass everyone. This also includes the deletion of previously recognized sectors that required specific legal protection due to their hazardous nature.

FINDINGS

The new labour code in India has both pros and cons, with its success requiring time to assess. India needs these reforms, especially after the pandemic. The International Labour Organisation proposed guidelines with four main pillars: Pillar 1 focuses on boosting the economy and job creation through active fiscal and monetary policies, and support for specific sectors like health. Pillar 2 aims to assist businesses and workers, enhance social protection, and provide tax relief. Pillar 3 is about protecting workers by adapting work conditions, ensuring health security, and providing paid leave. Pillar 4 encourages social dialogue among the government, workers, and employers. Examples from other countries include wage support in the UK, direct payments in Canada, and financial aid in Bangladesh for job loss due to Covid. The reforms align with India's vision and budget, promoting entrepreneurship while balancing risks during the pandemic. Long-term economic revival should guide constitutional principles.



PROPOSAL

1. It is essential to establish a dedicated labour pay commission to ensure fair labour wages and other compensations while maintaining industrial growth and production.
2. We must offer social security to women and work to change the traditional mindset of society to encourage more women to enter the labour force.
3. A law should be enacted to ensure the safety of women in the labour market.
4. Legislation is needed to mandate banking services for migrant and foreign labourers, preventing any fraudulent activities against them.
5. The elimination of the politically unhealthy culture related to labour is necessary to promote industrial growth and production at a global scale.
6. A law should be established that grants maternity leave across all sectors for both women and men.
7. We should introduce legislation that secures individuals' right to work.
8. A special law must be created to safeguard women working in rural India.
9. Specific provisions should be made for migrant labourers, ensuring they have access to housing facilities. Additionally, alongside MGNREGA, there should be an organization dedicated to providing employment to urban residents, as many impoverished individuals are unemployed in urban areas. A special scheme for young workers is needed.

CONCLUSION

India's labour force has long been a significant competitive advantage. It is critical to retain and increase this competitive edge by making it simpler to do business in the country by simplifying and combining labour legislation at the federal and state levels. The request for

further action to improve economic development implies considerable reforms in labour market governance, which past administrations pledged but did not achieve. Given the political will and agreement from both parties, there may not be a better time to do that. Our labour laws have been made more flexible by the government, leaving employees currently at the mercy of their employers, everything, from their working conditions to their wages, is up to the employer's discretion. Given that we typically lack mean labourers by a significant margin, the question that remains is whether or not this can attract investors. It was a conniving move on the part of the government to completely overhaul our labour laws and allow states to modify their domestic laws to erupt laws that could attract foreign investment while undoubtedly compromising the safety of the nation's own workers for a very long time, if not indefinitely. The regulations have been updated to reflect the present level of industrial and fiscal activity; nevertheless, there is still a long way to go before they are able to find a middle ground that is satisfactory for both the employees and the industry. There are several challenges that must be overcome before the economy can reach \$5 trillion in 2025, and one of these challenges is the myriad of labour-related problems that exist. The government is making an effort to impose a variety of work-related policy changes. Labour reforms are an urgent necessity, not merely as a push toward 'Make in India' and the comfort of doing business, but also to safeguard that the demographic dividend does not become a nightmare in the form of unemployment and under-employment.

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